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MD

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/124,307	07/29/98	MCKENZIE	1571-0002

QM02/1007

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EXAMINER
GRAVINI, S

ART UNIT	PAPER NUMBER
3744	3

DATE MAILED: 10/07/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/124,307

Applicant(s)

Terry L. MCKENZIE et al.

Examiner

Steve Gravini

Group Art Unit

3744

☒ Responsive to communication(s) filed on Aug 27, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-25 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 13-17 is/are allowed.

☒ Claim(s) 1-12 and 18-25 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed August 27, 1998 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because several references do not contain a publication date. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing elements will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Specification

2. The disclosure is objected to because of the following informalities: cross references on the first page of the application do not have application numbers in the specification. The examiner inserted the appropriate application numbers to the corresponding cross reference applications. No correction is required.

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Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-12 and 18-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-19 of copending Application No. 09/124,306. Although the conflicting claims are not identical, they are not patentably distinct from each other because each of the elements in the present application claims are recited in the copending application with the exception of the present application feature of spacers. It would have been obvious to one skilled in the art of grain drying to recite the feature of spacers for the purpose of providing a floor sweep assembly which rotates easily during grain drying operations while preventing damage to the grain as it is metered into the discharge hopper.

5. Claims 22-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-20 of copending Application No. 09/124,308. Although the conflicting claims are not identical, they are not patentably distinct from each other because each of the elements in the present application claims

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are recited in the copending application with the exception of the present application feature of spacers. It would have been obvious to one skilled in the art of grain drying to recite the feature of space for the purpose of providing a floor sweep assembly which rotates easily during grain drying operations while preventing damage to the grain as it is metered into the discharge hopper.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

6. Claims 13-17 are allowed.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sanneman et al. (4,004,351), Morrison, (5,566,470), and Morrison et al. (5,860,221) teach grain dryers.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Gravini whose telephone number is (703) 308-7570 and electronic transmission / e-mail address is "steve.gravini@uspto.gov". **If applicants chose to send information by e-mail, please be aware that confidentiality of the electronically transmitted message cannot be assured.** Information may also be sent to the examiner by facsimile machine at (703) 308-7764. Please see MPEP § 502.02.



**STEPHEN M. GRAVINI
PRIMARY EXAMINER**

smg
October 1, 1999